Filed 7/28/09 P. v. Cyrus CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

TYRIE JAMAL CYRUS,

Defendant and Appellant.

F054757

(Super. Ct. No. 07CM2148)

OPINION

APPEAL from a judgment of the Superior Court of Kings County. Louis F. Bissig, Judge.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and Charles A. French, Deputy Attorneys General, for Plaintiff and Respondent.

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STATEMENT OF THE CASE

On July 23, 2007, the Kings County District Attorney filed an information in Case No. 07CM2148 in superior court charging appellant Tyrie Jamal Cyrus as follows:

Count 1--kidnapping with personal use of a firearm (Pen. Code[1], §§ 207, subd. (a), 12022.5, subd. (a)(1), 12022.53, subd. (b));

Count 2--evading a peace officer with willful and wanton disregard for the safety of persons and property (Veh. Code, § 2800.2, subd. (a));

Count 3--criminal threats entailing an immediate prospect of execution and placing the victim in sustained fear of her safety and that of her immediate family (§ 422, subd. (a));

Count 4--drawing and exhibiting a firearm in the presence of a motor vehicle occupant (§ 417.3);

Count 5--vehicular theft (Veh. Code, § 10851, subd. (a));

Count 6--misdemeanor carrying of a loaded firearm in a public place (§ 12031, subd. (a)(1));

Count 7--carrying a loaded firearm with intent to commit a felony (§ 12023, subd. (a)); and

Count 8--false imprisonment (§ 236).

On July 24, 2007, appellant was arraigned, pleaded not guilty to the substantive counts, and denied the special allegations.

On November 6, 2007, the court filed an order consolidating case No. 07CM2148 with case Nos. 07CM2104 and 07CM2129 and designating case No. 07CM2148 as the lead case. On November 21, 2007, the court conducted a trial confirmation hearing and clarified that the three cases had been consolidated for all purposes. The prosecution

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1 All further statutory references are to the Penal Code unless otherwise indicated.

informed the court and opposing counsel of its intent to file an amended information containing the consolidated charges on the first day of trial.

On November 26, 2007, the Kings County District Attorney filed an amended information in superior court charging appellant Tyrie Jamal Cyrus as follows:

Count 1--misdemeanor battery of a cohabitant (§ 243, subd. (e)(1));

Count 2--misdemeanor false imprisonment (§ 236);

Count 3--misdemeanor infliction of corporal injury upon a cohabitant (§ 273.5, subd. (a));

Count 4--misdemeanor criminal threats entailing an immediate prospect of execution and placing the victim in sustained fear of her safety and that of her immediate family (§ 422);

Count 5--felony kidnapping (§ 207, subd. (a)) with personal use of a firearm (§§ 12022.5, subd. (a)(1), 12022.53, subd. (b));

Count 6--felony evasion of a peace officer (Veh. Code, § 2800.2, subd. (a));

Count 7--felony criminal threats entailing an immediate prospect of execution and placing the victim in sustained fear of her safety and that of her immediate family (§ 422) with personal use of a firearm (§§ 12022.5, subd. (a)(1), 12022.53, subd. (b));

Count 8--felony brandishing a firearm at a person in a motor vehicle (§ 417.3);

Count 9--vehicular theft (Veh. Code, § 10851, subd. (a));

Count 10--misdemeanor carrying of a loaded firearm in a public place (§ 12031, subd. (a)(1));

Count 11--felony carrying of a loaded firearm with the intent to commit a felony (§ 12023, subd. (a)); and

Count 12--felony false imprisonment (§ 236) with personal use of a firearm (§§ 12022.5, subd. (a)(1), 12022.53, subd. (b)).

On November 26, 2007, jury trial commenced.

On November 28, 2007, the court amended by interlineations certain dates in the information and dismissed count 12 on motion of the prosecution.

On November 29, 2007, the jury returned verdicts finding appellant guilty of battery (§ 242), a lesser included offense of that charged in count 1; infliction of corporal injury upon a cohabitant (count 4); kidnapping (count 5); evading a peace officer (count 6); felony criminal threats (count 7); brandishing a firearm at a person in a motor vehicle (count 8); vehicular theft (count 9); unlawful carrying of a loaded firearm in a public place (count 10), and unlawful carrying of a loaded firearm with intent to commit a felony (count 11). The jury also found the personal use allegations true as to counts 5 and 7.

On February 6, 2008, the court conducted a sentencing hearing, denied appellant probation, and sentenced him to a total term of 19 years four months in state prison. The court imposed the upper term of three years on count 7 (criminal threats) plus a consecutive term of 10 years for the related enhancement; a consecutive term of eight months on count 6 (felony evasion of a peace officer); a consecutive term of eight months on count 9 (felony auto theft); and stayed terms on count 5 (kidnapping) and count 11 (unlawful carrying of a loaded firearm). The court imposed concurrent terms on counts 1, 4, and 10, awarded 259 days of custody credits, imposed a $3,600 restitution fine (§ 1202.4, subd. (b)), and imposed and suspended a second such fine pending successful completion of parole (§ 1202.45).

On the same date, appellant filed a notice of appeal.

On February 29, 2008, the superior court recalled appellant's sentence and resentenced appellant to a total term of 19 years four months in state prison. The court imposed the upper term of eight years for kidnapping (count 5), eight-month terms for evading a peace officer and vehicular theft (counts 6 & 9), and a consecutive term of 10 years for the section 12022.53, subdivision (b) enhancement related to count 5. The court imposed a $3,600 restitution fine (§ 1202.4, subd. (b)), imposed and suspended a second

such fine pending successful completion of parole (§ 1202.45), and awarded 286 days of custody credits.

STATEMENT OF THE FACTS

In May 2007, appellant lived with his girlfriend Tammy Kimbriel. On the evening of May 9, 2007, appellant and Kimbriel had an argument and she said they "both got pushed." Kimbriel said appellant struck and choked her at some point during their argument but she was unsure what happened because she and appellant were using methamphetamine at the time. Kimbriel also suffered from grand mal seizures and would simultaneously take medication for the seizures and smoke methamphetamine. According to Kimbriel, she would sustain bruises during her seizures and appellant had saved her life on several occasions by administering CPR when she stopped breathing during a seizure.

Appellant and Kimbriel separated after the May 9 incident. On June 26, 2007, she returned to their shared apartment to discuss a reconciliation. At the apartment, appellant asked Kimbriel to leave with him. She hesitated and then went along because he said they needed to talk. Kimbriel claimed appellant did not compel her to enter the car and did not prevent her from alighting after they smoked methamphetamine inside the vehicle. At trial, she did not recall informing police that appellant threatened to kill her nephew if she did not accompany him on the car ride. She also denied any recollection of appellant saying "[s]omeone is going to die tonight."

As appellant and Kimbriel drove around, a police officer followed them and tried to stop their vehicle. Appellant fled from the officer and led him on a high-speed chase. During the chase, Kimbriel threw a firearm out of the window. Appellant slapped Kimbriel's face with the back of his hand after she disposed of the gun. Kimbriel claimed the slap was accidental and occurred because appellant was making fast turns with the steering wheel of the car. Appellant ultimately crashed the car and was placed under arrest. Kimbriel maintained her mind was "such a blur that night." At the scene,

Kimbriel told an officer that appellant forced her into the car. However, she contradicted that statement at trial.

On the afternoon of May 9, 2007, Lemoore Police Officer Patrick Mundy responded to a domestic disturbance call. He spoke with appellant and Kimbriel at their apartment. Both appellant and Kimbriel said the 911 call was a mistake. Officer Mundy left their apartment after a 15-minute visit. About 15 minutes after his departure, Mundy received another dispatch for the same residence. Appellant was not present when Mundy arrived for the second time. Kimbriel told Mundy she could now report the incident and seek an emergency protective order because appellant was not present. Kimbriel said she and appellant had argued and that appellant grabbed her neck and restrained her as she tried to leave their apartment. Kimbriel told Mundy that she and appellant had been together for more than a year and this was the first time he had laid hands on her. Kimbriel also told Mundy she wanted a protective order for her safety but did not want appellant to go to jail.

On June 1, Lemoore Police Officer Ryan Obarr was on duty and received a dispatch to meet with Kimbriel. Kimbriel reported that she and appellant got into an argument. They argued over the possible move of appellant's mother into their shared apartment. According to Kimbriel, appellant grabbed her by the throat to stop her from screaming and threatened her by saying, "[s]hut up, bitch, or I'll kill you." Appellant denied any involvement in such an altercation.

Lemoore Police Officer John Henderson was on duty in a marked patrol unit on June 26. Henderson saw appellant driving a Honda CRX at about 2:26 a.m. Appellant, whom Henderson knew from prior law enforcement contacts, was wearing blue cotton gloves. Henderson attempted to stop the Honda because appellant failed to use a turn signal but appellant sped away. Henderson pursued the Honda with emergency lights and siren activated. Appellant ran several stop signs and ultimately crashed into a parked car.

Henderson arrested appellant after he was subdued with a taser. Law enforcement personnel found a .22 caliber rifle that had been thrown from the Honda.

Officer Henderson conducted a tape-recorded interview with Kimbriel at the Lemoore Police Station. Kimbriel was upset and cried uncontrollably during that interview. She told Henderson that she had been taking her seizure medicine throughout the day because appellant hit her. According to Kimbriel, she and appellant had a conversation at their apartment about 45 minutes before the police pursuit. Appellant urged her to take a ride with him and threatened, "[I]f you don't go with me ... I will kill your nephew." Appellant had left his car idling and she got into the vehicle because she believed he would beat her if she declined. Kimbriel said she was afraid of appellant because he pulled on her arm and punched her in the eye three days earlier. Once they began driving, appellant told Kimbriel he should take her into the country "right now and kill you!" When Kimbriel told appellant she loved him, appellant said, "[S]omebody's gonna die tonight." When Kimbriel asked appellant to let her get out of the car, he said, "Shut up, bitch! Just shut up, bitch!"

Kimbriel said appellant saw the police car and started going faster even though she was screaming for him to slow down the vehicle. Appellant had a gun in the vehicle and placed it on the console in the middle of the front seat. Although Kimbriel told appellant to slow down, he kept saying "shut up bitch" and also said it was her fault. Kimbriel told Henderson that appellant instructed her to throw the firearm out of the car window. According to Kimbriel, appellant said, "[T]hrow it ya bitch! Throw that!" After Kimbriel complied, appellant said he had not instructed her to do so. Appellant slapped her and said, "I didn't tell you to do that, bitch!"

During the pursuit, Kimbriel told appellant to slow down the car and allow her to get out. Henderson asked whether appellant took her against her will and Kimbriel replied in the affirmative. Kimbriel said she never wanted to get into appellant's car and

asked him many times to let her out of the car. Kimbriel said she thought appellant was going to kill her that evening.

Defense

Testifying on appellant's behalf at trial, Kimbriel said she had taken pain and anti-seizure medications on the day before the police pursuit. She also said she smoked methamphetamine just before the police chase occurred. She claimed her drug ingestion contributed to her inability to recall what she told police in June 2007. At trial, Kimbriel claimed appellant did not threaten her to get into the car. She said she did not recall telling Officer Henderson that appellant took her against her will and refused to let her out of the car. Kimbriel testified she was on drugs during this period of time and that was the reason why she inculpated appellant to Officer Henderson.

Appellant testified on his own behalf and admitted a felony conviction for carjacking and being armed with a firearm at the age of 14. With respect to the May 9, 2007 incident, appellant said he never grabbed Kimbriel by the neck and never hit her. He also denied assaulting her on June 1, 2007.

As to the police pursuit, appellant said he drove the Honda CRX on June 25 and 26 with permission from the registered owner. Appellant said he picked up Kimbriel and she willingly entered the vehicle. He acknowledged there was a gun in the Honda but claimed he had never seen it before. As they drove, appellant did not forbid Kimbriel from getting out of the car and she did not ask to get out of the car. Appellant said he saw the police car and did use the turn signal on the Honda. Kimbriel then reached for the firearm and threw it out of the window. Appellant said he wore gloves because some of the knuckles on his right hand were broken and the glove helped with swelling. Appellant acknowledged that he smoked methamphetamine all day and did not stop when the police officers pursued the Honda.

Appellant maintained that Kimbriel was lying when she told officers that she was afraid appellant was going to kill her. He also said she lied about appellant allegedly

saying he "ought to take her out to the country and kill her right now." Appellant said Kimbriel lied about everything except the fact that she suffered from seizures.

Rebuttal

Officer Henderson showed jurors the blue gloves that appellant wore on the evening of his arrest. Henderson also showed jurors some photographs of a bruise to Kimbriel's lip. Kimbriel told Henderson that appellant inflicted the bruise on the evening of the high-speed pursuit.

DISCUSSION

I. SHOULD APPELLANT'S KIDNAPPING CONVICTION BE REVERSED BECAUSE THE TRIAL COURT FAILED TO GIVE CALCRIM[2] NO. 3500 (JURY UNANIMITY)?

Appellant contends the judgment of conviction on count 5 (kidnapping) must be reversed because the court failed to give CALCRIM No. 3500 (unanimity) or a similar instruction.

The prosecutor stated during closing argument:

> "Now, we move along to Count 5. That's the kidnapping. Kidnapping, factually, you may be able to find in a couple different ways. Now, let's go through the elements for a moment. The defendant took, held or detained another person by using force or by instilling reasonable fear. Remember, we didn't get much help from Ms. Kimbriel in this trial, at least, directly from that chair right there. We got it from her interview with this man within minutes of the actual incident. Let's stop for a minute and let's see what the evidence is about taking, holding her by using force or instilling fear. She came over to get her stuff. Remember, they had just broken up a few days before. He wanted to talk. Let's go some place where we can talk. She told him no. And do you remember what his response was? You'll go with me or I'll kill your nephew. Now, she already knows he's mad at the nephew because, a few weeks prior, what had the nephew allegedly done? He dumped him out at Harris Ranch.

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2 Judicial Council of California Criminal Jury Instructions (2006-2007) (CALCRIM).

"Or another way that that fear could have been instilled would be when they're in the car. This is before the chase starts, by the way. They're in the car. They're driving slowly. She's begging and pleading, because what has he told her now? He's told her on two occasions. He said I ought to take you out to the country and kill you. And, then shortly after that, he said someone's going to die tonight. And then what did he do? Shortly after saying that, he reached around the back seat and produced a loaded .22 caliber semiautomatic rifle with a sawed-off stock. Any one of those acts can meet that element. [¶] ... [¶]

"The third element, the other person, Ms. Kimbriel, didn't consent to the movement. The first time, she didn't want to go with him. The only reason she went with him was the threat to kill the nephew. The other times, she is pleading, pleading with him for her life to be let out. Just let me out. Let me go. In fact, on the recording, she specifically said, at one point, he stopped, was going to let me out. She started to get out. He got out, came back around and forced her back in the car and said get in, bitch. It doesn't sound like she gave consent to go ahead and go."

Appellant now contends the prosecutor argued "in an 'either/or' manner" evidence of multiple, separate acts alleged to fulfill the elements of kidnapping. He submits these events occurred at different times of the day and in different locations and it is unclear what aspects of Tammy Kimbriel's testimony the jury unanimously agreed upon since Kimbriel "was a hostile prosecution witness and basically denied every aspect of the prosecution's case, and because it was clear she was either intoxicated or highly emotional or both at the time of the alleged offense."

CALCRIM No. 3500 states:

"The defendant is charged with _____<insert description of alleged offense> [in Count __] [sometime during the period of _____ to _____].

"The People have presented evidence of more than one act to prove that the defendant committed this offense. You must not find the defendant guilty unless you all agree that the People have proved that the defendant committed at least one of these acts and you all agree on which act (he/she) committed."

In *People v. Russo* (2001) 25 Cal.4th 1124, 1132, the court stated:

> "In a criminal case, a jury verdict must be unanimous. (*People v. Collins* (1976) 17 Cal.3d 687, 693; see Cal. Const., art. I, § 16 [expressly stating that 'in a civil cause three-fourths of the jury may render a verdict' and thereby implying that in a criminal cause, only a unanimous jury may render a verdict].) The court here so instructed the jury. (See CALJIC No. 17.50.) Additionally, the jury must agree unanimously the defendant is guilty of a *specific* crime. (*People v. Diedrich* (1982) 31 Cal.3d 263, 281.) Therefore, cases have long held that when the evidence suggests more than one discrete crime, either the prosecution must elect among the crimes or the court must require the jury to agree on the same criminal act. (*People v. Castro* (1901) 133 Cal. 11, 13; *People v. Williams* (1901) 133 Cal. 165, 168; CALJIC No. 17.01; but see *People v. Jones* (1990) 51 Cal.3d 294.)
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> "This requirement of unanimity as to the criminal act 'is intended to eliminate the danger that the defendant will be convicted even though there is no single offense which all the jurors agree the defendant committed.' (*People v. Sutherland* (1993) 17 Cal.App.4th 602, 612.)"

Appellant submits the prosecution charged him with one count of kidnapping in the instant case but offered evidence of and argued that multiple acts occurring at different times satisfied the elements of the offense. Thus, depending on what individual jurors elected to believe or discount, he could have been convicted based on different acts occurring at different times. Appellant maintains such a conviction "is clearly not a unanimous verdict and cannot stand."

"'[T]he crime of kidnapping continues until such time as the kidnapper releases or otherwise disposes of the victim and [the defendant] has reached a place of temporary safety.'" (*People v. Palacios* (2007) 41 Cal.4th 720, 726.) "[W]here the evidence shows only a single discrete crime but leaves room for disagreement as to exactly how that crime was committed or what the defendant's precise role was, the jury need not unanimously agree on the basis or … 'theory' whereby the defendant is guilty. [Citation.]" (*People v. Russo, supra,* 25 Cal.4th at p. 1132.) Moreover, "[t]he unanimity instruction is not required when the acts are so closely connected in time as to form part of one transaction." (*People v. Crandell* (1988) 46 Cal.3d 833, 875.)

The kidnapping in the instant case entailed a continuous course of conduct. Kimbriel told Officer Henderson they were at their shared apartment about 35 to 45 minutes before the police pursuit. At the apartment, appellant threatened to kill Kimbriel's nephew if she did not accompany appellant. Kimbriel got into the car because appellant told her to "get in, bitch!" Kimbriel told Henderson that appellant would have beaten her up if she did not comply. She also told Henderson she was afraid of appellant. Kimbriel explained to the officer that she repeatedly asked appellant to let her out of the car. He said appellant showed her the gun in the vehicle and she believed he was going to fulfill this threat by killing her. Appellant called her a "bitch" multiple times, told her to shut up, and said it was all her fault. He also slapped her face, leaving a bruise. Kimbriel told Henderson she never wanted to get into the car and was convinced appellant was going to kill her.

As respondent points out, the movement of appellant and Kimbriel in the Honda CRX was continuous, formed one transaction, and constituted one act of kidnapping. Under all of these facts and circumstances, the court was not required to instruct the jury on unanimity pursuant to CALCRIM No. 3500 or a similar instruction.

II. DID THE TRIAL COURT ERRONEOUSLY SENTENCE APPELLANT ON THE FELONY EVADING COUNT WHERE THE UNDERLYING CONDUCT WAS PART OF THE KIDNAPPING ALLEGED IN A SEPARATE COUNT?

Appellant contends the evading charge in count 6 was part of an indivisible course of conduct arising from the kidnapping charged in count 5. He submits the punishment on count 6 should have been stayed under section 654 because both arose from the same incident.

Count 5 of the amended information charged appellant with felony kidnapping of Tammy Kimbriel on June 26, 2007 (§ 207, subd. (a)). Count 6 of the amended information charged appellant with felony evasion of pursuing peace officer's motor

vehicle on June 26, 2007 (Veh. Code, § 2800.2, subd. (a)). The probation officer stated in his report filed January 4, 2008:

> "There are several issues which require the application of Section 654 PC:
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> "With reference to V and VII, the undersigned believes the kidnapping was an ongoing event which started when the defendant first threatened the victim in order to coerce her into leaving with him, and ended with the collision. The defendant's actions in Count VII, to threaten death, were not independent of, and were not comprised of separate objectives of those in Count V, to wit, preventing the victim from leaving by force and fear. Therefore, it is the opinion of the undersigned that Count VII should be stayed pursuant to 654 PC."

At the February 29, 2008 sentencing hearing, the court stated:

> "In regard to Count 6, the charge of Vehicle Code Section 2800.2(a), the felony evasion of a traffic stop, unlike the threats and violence that were directed toward the victim, this crime was a threat to the motoring public at large and was committed after essentially all the acts necessary to commit the kidnap; in fact, all of the acts necessary to accomplish the acts of the kidnap had been committed, and the Court in applying the analysis under Rule 4.424 and Penal Code Section 654 ... is not of the opinion that 654 is applicable, and it is my opinion that this crime should be imposed as a consecutive sentence to Count 5, which would add eight months."

On appeal, appellant contends the evading count (count 6) was incidental to the kidnapping count (count 5), both crimes were committed with the same intent and objective (i.e., to complete the kidnap), and imposition of separate terms for each count was prohibited under section 654.

Section 654, subdivision (a), states:

> "An act or omission that is punishable in different ways by different provisions of law shall be punished under provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other."

"Section 654 prohibits the imposition of punishment for more than one violation arising out of an act or omission which is made punishable in different ways by different statutory provisions. This proscription applies not only where there is 'but one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction.' [Citations.] [¶] … [¶] The purpose of the protection against multiple punishment is to insure that the defendant's punishment will be commensurate with his [or her] criminal liability.'" (*People v. Masters* (1987) 195 Cal.App.3d 1124, 1127-1128.)

"'"The divisibility of a course of conduct depends upon the intent and objective of the actor. [I]f all the offenses are incident to one objective, the defendant may be punished for any one of them but not for more than one."' [Citation.] '"The initial inquiry in any section 654 application is to ascertain the defendant's objective and intent. [For example, the defendant may have] entertained multiple criminal objectives which were independent of and not merely incidental to [one another. In that case, he or she] may be punished for independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct." [Citation.] Whether the defendant maintained multiple criminal objectives is determined from all the circumstances and is primarily a question of fact for the trial court. [The trial court's] finding will be upheld on appeal if there is any substantial evidence to support it.' [Citation.] 'However, when there is no dispute as to the facts, the applicability of Penal Code section 654 is a question of law.' [Citation.]" (*People v. Stringham* (1988) 206 Cal.App.3d 184, 202.)

Although the Supreme Court has questioned "the direction multiple-punishment analysis has taken in California" since 1960, the court continues to find multiple punishment appropriate in cases involving consecutive, and therefore separate, intents and cases involving different, yet simultaneous, intents. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1204, 1216.) "The principal inquiry in each case is whether the

defendant's criminal intent and objective were single or multiple. Each case must be determined on its own facts. [Citations.] The question whether the defendant entertained multiple criminal objectives is one of fact for the trial court." The trial court's "findings on this question will be upheld on appeal if there is any substantial evidence to support them. [Citations.]" (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135-1136; *People v. Akins* (1997) 56 Cal.App.4th 331, 338-339.)

To constitute kidnapping under section 207, subdivision (a), the victim's movement must be accomplished by force or any other means of instilling fear. The movement is forcible where it is accomplished through the giving of orders which the victim feels compelled to obey because he or she fears harm or injury from the accused and the apprehension is reasonable under all of the circumstances. (*People v. Majors* (2004) 33 Cal.4th 321, 326-327.) A violation of Vehicle Code section 2800.2 entails the evasion of a pursuing peace officer while driving with a willful and wanton disregard for the safety of persons or property. (*People v. Calderon* (2005) 129 Cal.App.4th 1301, 1306.)

In the instant case, appellant kidnapped Kimbriel and drove around with her. Officer John Henderson noticed that appellant committed a traffic violation, attempted to contact appellant, and then pursued appellant's vehicle when he attempted to flee from the scene of the traffic violation. As respondent notes, appellant's intent in kidnapping Kimbriel was separate and distinct from his intent in evading Office Henderson. In violating section 207, subdivision (a), appellant unlawfully moved Kimbriel by the nonconsensual use of force or fear. In violating section 2800.2, subdivision (a), appellant sought to avoid apprehension by Officer Henderson, placing the officer and the public in danger as he fled the scene of the traffic violation, proceeded at a high rate of speed, and went through several posted intersections without stopping.

The record includes evidence to support a finding that appellant formed a separate intent and objective for counts 5 and the trial court properly concluded that section 654 was inapplicable.

DISPOSITION

The judgment is affirmed.

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HILL, J.

WE CONCUR:

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VARTABEDIAN, Acting P.J.

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WISEMAN, J.